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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,789	09/23/2003	Yong D. Zhao	P0010040.00/LG10126	4098
27581	7590	08/25/2011		
Medtronic, Inc. (CRDM) 710 MEDTRONIC PARKWAY NE MS: LC340 Legal Patents MINNEAPOLIS, MN 55432-9924			EXAMINER ALTER, ALYSSA MARGO	
			ART UNIT	PAPER NUMBER
			3762	
			NOTIFICATION DATE	DELIVERY MODE
			08/25/2011	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

rs.docketingus@medtronic.com

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**Advisory Action**  
**Before the Filing of an Appeal Brief**

**Application No.**

10/668,789

**Applicant(s)**

ZHAO ET AL.

**Examiner**

Alyssa M. Alter

**Art Unit**

3762

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 13 June 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(g).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.  
NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: \_\_\_\_\_

Claim(s) withdrawn from consideration: \_\_\_\_\_

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_

13. ☐ Other: \_\_\_\_\_

/Niketa I. Patel/  
Supervisory Patent Examiner, Art Unit 3762

/Alyssa M Alter/  
Examiner  
Art Unit: 3762

Continuation of 11, does NOT place the application in condition for allowance because: the arguments are not considered persuasive. The Applicant argues that "The distal end of the Dutcher lead of necessity needs to be stationary while the helix is screwed into tissue. Anyone, skilled or not, who has ever used a screwdriver understands this fact. The outer portion of the Dutcher stylet which operates as the screwdriver thus of necessity must be held in the curved configuration against the heart wall by the pre-formed curve of the inner stylet. There is no other curved structure to hold it there. It does not require an advanced degree to understand that making the curved portion more flexible renders it less suited to holding the tip of the lead stationary while the outer stylet is rotated around it".

However, Dutcher discloses in col. 3, lines 50-52, "This bend is preferably "J" shaped for insertion of the body implantable lead into the atrium." Therefore the examiner refutes the Applicants contention that the "preformed curve in Dutcher is intended to hold the distal tip of the lead stationary" (see Arguments page 8). Dutcher states that the "J-shape" is used to navigate the vasculature during insertion of the lead in the atrium. Thus the contention that Dutcher utilizes the J-shape or preformed curve to hold the tip stationary against the tissue wall is not a correct assertion.

Additionally, Dutcher discloses "FIG. 6 is a cross-sectional view of the two-piece stylet as assembled. Notice that distal tip 34 of solid stylet wire 30 is foreshortened. Notice also that torque induced by the implanting physician by turning knob 38 is transmitted via coil 40 to torque transmission tool 44, without regard to the shape of solid stylet wire 30"(col. 4, lines 18-23). Thus, as explained by Dutcher above, the shape of the stylet 30 does not affect the torque administered to the system(col. 4, lines 18-23). And as such, the curvature does not affect the transmission of torque in the system. Therefore, the Applicant's argument that the curve of the stylet 30 has to be "the least flexible portion" and tapering the stylet "would thus directly interfere with its functionality" is not consistent with the disclosure of Dutcher since the curvature is to navigate the vasculature during implantation.

Therefore, the claims remain rejected under Dutcher in view of Evans, III et al. since a modification to Dutcher to include a tapered portion as disclosed by Evans, III et al. would provide the predictable results of enhancing the maneuverability while navigating the vasculature to facilitate implantation of the medical lead.